



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 05 दिसम्बर, 2015 / 14 अग्रहायण, 1937

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 05th November, 2015

No: Sharm (A) 6-2/2014 (Awards)-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr.No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	311/14	Guddi Devi	E.E. HPPWD, Joginder Nagar	01-09-2015
2.	286/14	Mehar Singh	E.E. HPPWD, Joginder Nagar	01-09-2015
3.	283/14	Raj Kumar	E.E. HPPWD, Joginder Nagar	01-09-2015
4.	269/14	Sher Singh	E.E. HPPWD, Joginder Nagar	01-09-2015
5.	316/14	Kali Dass	E.E. HPPWD, Joginder Nagar	01-09-2015
6.	48/14	Karam Chand	E.E. HPPWD, Joginder Nagar	01-09-2015
7.	57/14	Kima Devi	E.E. HPPWD, Joginder Nagar	01-09-2015
8.	293/14	Roshan Lal	E.E. HPPWD, Joginder Nagar	01-09-2015
9.	294/14	Shakuntla Devi	E.E. HPPWD, Joginder Nagar	01-09-2015
10.	291/14	Chhuma Devi	E.E. HPPWD, Joginder Nagar	01-09-2015
11.	302/14	Hem Singh	E.E. HPPWD, Joginder Nagar	01-09-2015
12.	64/14	Hoshiyar Singh	E.E. HPPWD, Joginder Nagar	01-09-2015
13.	303/14	Surender Kumar	E.E. HPPWD, Joginder Nagar	01-09-2015
14.	321/14	Duni Chand	E.E. HPPWD, Joginder Nagar	01-09-2015
15.	209/15	Jeet Singh	M.D., M/s Amartex Industries Ltd.	03-09-2015
16.	99/14	Ashok Kumar	G.M. M/s Gulco Steel Ltd.	03-09-2015
17.	88/14	Naresh Kumar	M.D. M/s Satnam Industries	03-09-2015
18.	98/14	Rajmal	M/s Gulco steel Ltd.	03-09-2015
19.	100/14	Ashwani Kumar	M/s Gulco steel Ltd.	03-09-2015
20.	04/15	Basant Singh	D.F.O. Killar	07-09-2015
21.	03/15	Lekh Ram	D.F.O. Killar	07-09-2015
22.	326/14	Shakti Chand	E.E.HPPWD, Joginder Nagar	08-09-2015
23.	314/15	Yashwant Singh	D.F.O. Suket	15-09-2015
24.	72/15	Nimat Ram	D.F.O. Shamshi	15-09-2015
25.	75/15	Sher Singh	D.F.O. Shamshi	15-09-2015
26.	335/14	Chairman, KoldamLift Drink..	M.D. M/s SMC/SBM	16-09-2015
27.	338/14	Labu Chhering	HPPWD, Kaza	26-09-2015

28	341/14	Nawang Namgial	HPPWD, Kaza	26-09-2015
29	182/15	Raj Kumar	Conservative of Forest	29-09-2015
30	337/14	Chhering Dolma	E.E.HPPWD, Kaza	30-09-2015
31	339/14	Chhering Lama	E.E.HPPWD, Kaza	30-09-2015
32	340/14	Sonam Butith	E.E.HPPWD, Kaza	30-09-2015

By order,
R.D. DHIMAN,
Pr. Secretary (Lab. & Emp.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 311/ 2014

Smt. Guddi Devi w/o Shri Nihal Singh, r/o Village Raja, O.P. Tramat, Tehsil Joginder
Nagar, District Mandi, H.P. *.Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
.Respondent.

01-09-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

(K.K. Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

01-09-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.35 P.M. None appearance of petitioner or her ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

01-09-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 286/2014
Date of Institution : 18.9.2014
Date of decision : 01.09.2015

Shri Mehar Singh s/o Shri Bhareptu Ram, r/o VPO Dul, Tehsil Joginder Nagar, District
Mandi, H.P. *.Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Mehar Singh, S/O Shri Bhareptu Ram, R/O V.P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 03-2001 to 31-08- 2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. year 2001 who

worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 2001 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2008 and 10 years of continuous service on 31.12.2010 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 2001 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that petitioner does not fall in any two criteria for the implementation of the scheme framed under Mool Raj Upadhaya. It is further maintained that that no provision of the Act has been violated.

Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years March, 2001 to 31st August, 2007 is/was improper and unjustified as alleged? . .*OPP.*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR.*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 2001 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 2001 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 153 days, 163 days in 2002, 177 days in 2003, 154 days in 2004, 150 days in 2005, 148 days in 2006, 211 days in 2007, 358 days in 2008, 363 days in 2009, 365 days in 2010, 365 days in 2011, 364 days in 2012, 365 days in 2013 and 210 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002 and 2003 except at serial nos. 1 to 5 & 10 who had joined earlier to petitioner as workman at serial no.11 joined in the year 2003 whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in July, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge

petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Ram Dhan s/o Shri Trainu Ram who joined in February, 2003 as per Ex. RW1/D has been regularized but he was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2001 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross examination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 283/2014

Date of Institution : 18.9.2014

Date of decision : 01.09.2015

Shri Raj Kumar s/o Shri Mast Ram, r/o Village Banar, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. *. .Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Rajkumar, S/O Shri Mast Ram, R/O Village Banar, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 1999 to 31- 08 2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. January, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State

of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from December, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that petitioner does not fall in any two criteria for the implementation of the scheme framed under Mool Raj Upadhaya. It is further maintained that that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years 1999 to 31st August, 2007 is/was improper and unjustified as alleged?

..OPP.

2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPP.*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . .*OPP.*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPP.*
6. Relief.
9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. December, 1998 is not in dispute. It is the admitted case of petitioner that petitioner had worked since December, 1998 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 11 days, 164 days in 2000, 152 days in 2001, 165 days in 2002, 182 days in 2003, 161 days in 2004, 130.5 days in 2005, 147 days in 2006, 211 days in 2007, 364 days in 2008, 363 days in 2009, 365 days in 2010, 365 days in 2011, 354 days in 2012, 363 days in 2013 and 210 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2001, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in December, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. 14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Shri Himat Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of

working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndont only PW1 has admitted in crossexamination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the

delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 269/2014

Date of Institution : 27.8.2014

Date of decision : 01.09.2015

Shri Sher Singh s/o Shri Damodar Dass, r/o Village Banar, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sher Singh, S/O Shri Damodar Dass, R/O Village Banar, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 12-1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. December, 1998 who

worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1998 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from December, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that petitioner does not fall in any two criteria for the implementation of the scheme framed under Mool Raj Upadhaya. It is further maintained that that no provision of the Act has been violated.

Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years December, 1998 to 31st August, 2007 is/was improper and unjustified as alleged? . .*OPP.*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR.*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief

: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. December, 1998 is not in dispute. It is the admitted case of petitioner that petitioner had worked since December, 1998 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 15 days, 199 days in 1999, 166 days in 2000, 159 days in 2001, 157.5 days in 2002, 159.5 days in 2003, 154 days in 2004, 148 days in 2005, 157 days in 2006, 209 days in 2007, 357 days in 2008, 363 days in 2009, 365 days in 2010, 363 days in 2011, 354 days in 2012, 361 days in 2013 and 210 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2001, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in December, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Shri Himel Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party

to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot

be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 316/2014

Date of Institution : 24.10.2014

Date of decision : 01.09.2015

Shri Kali Dass s/o Shri Twaru Ram, r/o Village Nakehar, P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *. Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Kali Dass, S/O Shri Twaru Ram, R/O Village Nakehar, P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P. during September, 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. September, 1998 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1998 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder

Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that petitioner does not fall in any two criteria for the implementation of the scheme framed under Mool Raj Upadhaya. It is further maintained that that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years September, 1998 to 31st August, 2007 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . .OPR.
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .OPR.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 1998 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 1998 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 46 days, 72 days in 2001, 166 days in 2002, 181 days in 2003, 161 days in 2004, 158 days in 2005, 144 days in 2006, 209 days in 2007, 364 days in 2008, 363 days in

2009, 340 days in 2010, 365 days in 2011, 362 days in 2012, 359 days in 2013 and 202 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2001, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in December, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Shri Himel Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of

giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1998 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndent only PW1 has admitted in crossexamination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and**

Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 48/2014

Date of Institution : 21.2.2014

Date of decision : 01.09.2015

Shri Karam Chand s/o Shri Safaria Ram, r/o Village and P.O. Outpur, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Karam Chand S/O Shri Safaria Ram, R/O Village and P.O. Outpur, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during year, 1999 to 2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 6.5.1999 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25- F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as

General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from June, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 08.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 1999 to 2007 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .*OPR.*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 1999 is not in dispute. It is the admitted case of petitioner that he had worked since June, 1999 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 101 days, 212 days in 2000, 183 days in 2001, 166 days in 2002, 169 days in 2003, 168 days in 2004, 167 days in 2005, 171 days in 2006, 208 days in 2007, 354 days in 2008, 353 days in 2009, 311 days in 2010, 356 days in 2011, 349 days in 2012 and 351 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in June, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had

worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 57/2014

Date of Institution : 22.2.2014

Date of decision : 01.09.2015

Smt. Kima Devi w/o Shri Kali Dass, r/o Village Kathoun, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. *.Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *.Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Kima Devi, W/O Shri Kali Dass, R/O Village Kathoun, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during 1999 to 2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 28.9.1998 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 1999 to 2007 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . . .*OPR*.
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged. . . .*OPR*.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 1998 is not in dispute. It is the admitted case of petitioner that she had worked since October, 1998 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 81 days, 184 days in 1999, 216 days in 2000, 191 days in 2001, 176 days in 2002, 171 days in 2003, 169 days in 2004, 171 days in 2005, 163 days in 2006, 213 days in 2007, 354 days in 2008, 354 days in 2009, 342 days in 2010, 346 days in 2011, 358 days in 2012 and 351 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1998, 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in October, 1998, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers

who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for

petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 293/2014

Date of Institution : 18.9.2014

Date of decision : 01.09.2015

Shri Roshan Lal s/o Shri Fagnu Ram, r/o Village Mhatkehru, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P. *. Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Roshan Lal, S/O Shri Fagnu Ram, R/O Village Mhatkehru, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. during 06- 2002 to 31-8-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer (s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 6.9.2000 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25- F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from February, 2002 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully. 8. From the contentions raised, following issues were framed on 08.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years June, 2000 to 31-8-2007 is/was improper and unjustified as alleged? . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . .OPR.
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . .OPR.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 2002 is not in dispute. It is the admitted case of petitioner that he had worked since June, 2002 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2002 petitioner had worked for 85 days, 149 days in 2003, 140 days in 2004, 149 days in 2005, 151 days in 2006, 226 days in 2007, 364 days in 2008, 363 days in 2009, 361 days in 2010, 361 days in 2011, 354 days in

2012, 359 days in 2013 and 210 days in 2014. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 7,8 & 10 who had joined earlier to petitioner whereas petitioner had joined in 2002. Since respondent had not disputed to have engaged petitioner in June, 2002, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2002 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2002 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 7,8 & 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2002 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2002 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2002 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2002 to 2007 was certainly illegal and unjustified which is

manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2002 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was

made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 294/2014

Date of Institution : 18.9.2014

Date of decision : 01.09.2015

Smt. Shakuntla Devi w/o Shri Chamaru Ram, r/o Village Kathon, P.O. Panjalag, Tehsil
Joginder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
.*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Shakuntla Devi, W/O Shri Chamaru Ram, R/O Village Kathon, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during year 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 25.9.1998 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity).

This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 08.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 1999 to 31.8.2007 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . . .*OPR*.
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged. . . .*OPR*.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 1998 is not in dispute. It is the admitted case of petitioner that she had worked since October, 1998 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 70 days, 188 days in 1999, 216 days in 2000, 177 days in 2001, 170 days in 2002, 173 days in 2003, 164 days in 2004, 170 days in 2005, 135 days in 2006, 201 days in 2007, 349 days in 2008, 346 days in 2009, 340 days in 2010, 358 days in 2011, 346 days in 2012 and 352 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1998, 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in

1998. Since respondent had not disputed to have engaged petitioner in October, 1998, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no

inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndont only PW1 has admitted in crossexamination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of

fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 291/2014

Date of Institution : 18.9.2014

Date of decision : 01.09.2015

Smt. Chhuma Devi w/o Shri Nek Ram, r/o Village Balhi, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.

. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Chhuma Devi, W/O Shri Nek Ram, R/O Village Balhi, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. during November, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 06.4.1999 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from August, 2000 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of

the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25- F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 08.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years November, 1999 to 31.8.2007 is/was improper and unjustified as alleged?
..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged?
..OPR.
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged.
..OPR.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief

: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. August, 2000 is not in dispute. It is the admitted case of petitioner that she had worked since August, 2000 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2000 petitioner had worked for 82 days, 163 days in 2001, 163 days in 2002, 175 days in 2003, 161 days in 2004, 165 days in 2005, 167.5 days in 2006, 228 days in 2007, 352 days in 2008, 353 days in 2009, 354 days in 2010, 347 days in 2011, 339 days in 2012, 348 days in 2013 and 200 days in 2014. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial nos. 7,8 & 10 who had joined earlier to petitioner whereas petitioner had joined in 2000. Since respondent had not disputed to have engaged petitioner in August, 2000, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously

engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 7,8 & 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2000 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2000 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in crossexamination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and

continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 302/2014

Date of Institution : 20.9.2014

Date of decision : 01.09.2015

Shri Hem Singh s/o Shri Sanichru Ram, r/o Village Ropa, P.O. Pipli, Tehsil Joginder Nagar,
District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P.
. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Hem Singh, S/O Shri Sanichru Ram, R/O Village Ropa, P.O. Pipli, Tehsil Joginder Nagar, District Mandi, H.P. during November, 2000 to 31-8-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer (s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 02.11.2000 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from August, 2002 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 08.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years November, 2000 to 31-8-2007 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .*OPR.*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. August, 2002 is not in dispute. It is the admitted case of petitioner that he had worked since August, 2002 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2002 petitioner had worked for 55 days, 171 days in 2003, 168 days in 2004, 157 days in 2005, 121 days in 2006, 211 days in 2007, 364 days in 2008, 365 days in 2009, 359 days in 2010, 361 days in 2011, 353 days in 2012, 356 days in 2013 and 203 days in 2014. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 1,7,8 & 10 who had joined earlier to petitioner whereas petitioner had joined in 2002. Since respondent had not disputed to have engaged petitioner in August, 2002, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in crossexamination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2002 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2002 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 1,7,8 & 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2002 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2002 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has

admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2002 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2002 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2002 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more

than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 64/2014

Date of Institution : 22.2.2014

Date of decision : 01.09.2015

Shri Hoshiyar Singh s/o Shri Rup Lal, r/o Village & P.O. Chalharg, Tehsil Joginder Nagar,
District Mandi, H.P. *Petitioner.*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P.
.. . . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Hoshiyar Singh, S/O Shri Rup Lal, R/O Village & P.O. Chalharg, Tehsil Joginder Nagar, District Mandi, H.P. during 2001 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 6.4.1999 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is

alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25- F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc. 4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from April, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully. 8. From the contentions raised, following issues were framed on 08.1.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year 2001 to 2007 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .*OPR.*
5. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . . .*OPR.*

6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. April, 1999 is not in dispute. It is the admitted case of petitioner that he had worked since April, 1999 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 43 days, 14 days in 2000, no muster rolls were issued from the years 2001 to 2003, 125 days in 2004, 171 days in 2005, 163 days in 2006, 232 days in 2007, 353 days in 2008, 361 days in 2009, 361.5 days in 2010, 364 days in 2011, 365 days in 2012 and 364 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 7 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in April, 1999, he ought to have been

regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 7. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what

manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.5

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs.**

Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 303/2014

Date of Institution : 20.09.2014

Date of decision : 01.09.2015

Shri Surender Kumar s/o Shri Doda Ram, r/o Village Ropru, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. .Petitioner.

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Surender Kumar, S/O Shri Doda Ram, R/O Village Ropru, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. during July, 2002 to 31-08-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer (s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 02.7.2002 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from

February, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 08.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years July, 2002 to 31-08-2007 is/was improper and unjustified as alleged? . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . .*OPR.*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent *w.e.f.* February, 2003 is not in dispute. It is the admitted case of petitioner that he had worked since February, 2003 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2003 petitioner had worked for 146.5 days, 148.5 days in 2004, 155 days in 2005, 152.5 days in 2006, 222 days in 2007, 354 days in 2008, 359 days in 2009, 357 days in 2010, 361 days in 2011, 356 days in 2012, 359 days in 2013 and 206 days in 2014. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial nos. 1 to 3 & 7, 8 and 10 who had joined earlier to petitioner whereas petitioner had joined in 2003. Since respondent had not disputed to have engaged petitioner in February, 2003, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2003 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2003 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 1 to 3 & 7, 8 and 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2003 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2003 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2003 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2003 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2003 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of

service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 321/2014

Date of Institution : 24.10.2014

Date of decision : 01.09.2015

Shri Duni Chand s/o Shri Tokha Ram, r/o Village Kathoun, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P. *. Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Duni Chand, S/O Shri Tokha Ram, R/O Village Kathoun, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during 1999 to 31-08-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer (s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 6.11.1999 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from September, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25- F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years August, 1999 to 31-08-2007 is/was improper and unjustified as alleged? . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . .*OPR*.
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . .*OPR*.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. September, 1999 is not in dispute. It is the admitted case of petitioner that he had worked since September, 1999 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 53 days, 221 days in 2000, 189 days in 2001, 174 days in 2002, 173 days in 2003, 164 days in 2004, 170 days in 2005, 166 days in 2006, 209 days in 2007, 354 days in 2008, 336 days in 2009, 357 days in 2010, 341 days in 2011, 353 days in 2012 and 359 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in September, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 7. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted

which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional**

Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.(Camp at Una)**

Ref: No. : 209/2015

Shri Jeet Singh s/o Late Shri Raja Ram, r/o Mohalla Galuan, Ward No.3, Tehsil & District
Una, H.P. *.Petitioner.*

Versus

1. The Managing Director, M/S Amartex Industries Limited, 365, Amartex House,
Industrial Area Panchkula, Haryana(Principal Employer).

2. The Employer, M/S Star Security Services, V.P.O. Nagwain, District Mandi,
H.P.(Contractor). *.Respondents.*

03-09-2015 Present: Petitioner (Jeet Singh) in person.

None for the respondents.

Heard. The petitioner has made statement that he does not want to proceed with this present
reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present
reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. Let copy of the Order/Award be sent to the appropriate Government for information
and further necessary action / publication.

5. The file, after completion be consigned to the records.

Announced:
03.09.2015

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.(Camp at Una)**

Ref: No. : 99/2014

Sh. Ashok Kumar s/o Shri Gurbachan Singh, r/o Bathu, Tehsil Haroli District Una, H.P.
..Petitioner..

Versus

The Employer/General Manager, M/S Gilco Steels Limited, V.P.O. Singan, Industrial Area
Tahliwal, Tehsil Haroli, District Una, H.P. ..Respondent.

03-09-2015 Present: Sh. Vijay Kaundal, adv. csl. for the petitioner.

None for the respondent.

Heard. Ld. csl. for the petitioner has made statement that he does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference/claim petition is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
03.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.(Camp at Una)**

Ref: No. : 88/2014

Sh. Naresh Kumar s/o Shri Kashmir Singh, r/o V.P.O. Kuthar Beet, Tehsil Haroli, District
Una, H.P. ..Petitioner.

Versus

The Employer/Managing Director, M/S Satnam Industries, (P) Limited, V.P.O. Amrali,
Tehsil Haroli, District Una, H.P. ..Respondent.

03-09-2015 Present: Sh. Vijay Kaundal, adv. csl. for the petitioner.

None for the respondent.

Heard. Ld. csl. for the petitioner has made statement that he does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
03.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.(Camp at Una)**

Ref: No. : 98/2014

Sh. Rajmal s/o Shri Pritam Singh Rana, r/o Village Dhatti, P.O.Baggi, Tehsil Khundian,
District Kangra, H.P. *.Petitioner.*

Versus

The Employer/General Manager, M/S Gilco Steels Limited, V.P.O. Singan, Industrial Area
Tahliwal, Tehsil Haroli, District Una, H.P. *.Respondent.*

03-09-2015 Present: Sh. Vijay Kaundal, adv. csl. for the petitioner.

None for the respondent.

Heard. Ld. csl. for the petitioner has made statement that he does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

5. The file, after completion be consigned to the records.

Announced:
03.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.(Camp at Una)**

Ref: No. : 100/2014

Sh. Ashwani Kumar s/o Sh. Prakash Chand, r/o Village Dhatti, P.O.Baggi, Tehsil
Khundian, District Kangra, H.P. *. .Petitioner.*

Versus

The Employer/General Manager, M/S Gilco Steels Limited, V.P.O. Singan, Industrial Area
Tahliwal, Tehsil Haroli, District Una, H.P. *. .Respondent.*

03-09-2015 Present: Sh. Vijay Kaundal, adv. csl. for the petitioner.

None for the respondent.

Heard. Ld. csl. for the petitioner has made statement that he does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records. Announced:

03.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 04/2015

Date of Institution : 13.01.2015

Date of Decision : 07.09.2015

Shri Basant Singh s/o Shri Suba Ram, r/o Village Chou, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. . . . *Petitioner.*

Versus

The Divisional Forest Officer, Bharmour Forest Division, Killar, District Chamba, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Basant Singh S/O Sh. Suba Ram, R/O Village–Chou, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. by The Divisional Forest Officer, Bharmour Forest Division, Killar Distt. Chamba, during April, 2009 without serving notice, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts of the case as set up in the claim petition revealed that petitioner had been engaged by respondent/department w.e.f. March, 2002 on daily waged basis on muster roll in Killar Range of Pangi and at the time of engagement, no appointment letter or order had been issued besides no casual card or attendance card was provided to petitioner from 2002 onwards ignoring guidelines issued by the Hon’ble High Court in CWP No.559/1984 titled as Jagdev Singh vs. State of H.P. & Others. It is claimed that petitioner had been engaged and disengaged by the department by giving fictional breaks from date of initial appointment so that he did not complete 160 days in each calendar year so as to get the benefit of the provisions of Section 25-B of the Industrial Disputes Act and this practice continued upto March 2009. It is alleged that from March, 2009 while the termination of his service neither any show cause notice had been given to the petitioner regarding his misconduct qua absence from duty nor any inquiry was conducted against the petitioner besides any retrenchment compensation was also not paid to the petitioner. It is alleged

that while terminating services of petitioner, respondent had not followed the principle of 'Last come First go' as such junior persons had been retained in service continuously without any break and fresh hands were also engaged after termination of the services of petitioner and respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947. It is alleged that the persons junior to petitioner had been regularized by the respondent department. After that the petitioner had raised industrial dispute against the respondent department to condone his illegal breaks period in continuity of service and revoke his final termination w.e.f. April, 2009. It is alleged that the act of respondent/department giving fictional breaks to petitioner and finally terminating on April, 2009 was illegal, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act and the same was unfair labour practice. It further remains the case of petitioner that he had raised industrial dispute before the Conciliation Officer/appropriate government alleging therein that services of petitioner had been arbitrarily terminated by giving fictional breaks. Accordingly, discriminatory attitude of respondent in giving fictional breaks to the petitioner and giving regular work to other juniors was alleged to be illegal. The act of engagement and disengagement intermittently is stated to be highly arbitrary, illegal and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and the same constituted unfair labour practice as defined under Vth Schedule Clause 10 of the Act. Accordingly, petitioner has prayed for setting aside the break period illegally from 2002 onwards in favour of petitioner and has also prayed for his regularization after completing 10 years of service or any other relief petitioner is found entitled.

4. Respondent contested claim petition, filed reply inter-alia taken preliminary objection of maintainability. On merits, it is claimed that petitioner had been engaged as daily waged mazdoor in Purthi Range of Pangi Forest Division since May, 2000 and not in March, 2000 as alleged by petitioner. It is pertinent to mention here that petitioner had not worked for the years 2001, 2002 and 2006 and had never completed 160 days in any calendar years besides maintained that work pertaining forestry was generally seasonal in nature and on completion of the seasonal work, plantation raised/plants raised in nursery as per the schedule of forestry operations and all activities are discontinued except supervision and protection which is carried out through permanent staff of the respondent/department. As such, fact of violation of Section 25-B has been emphatically denied. It has also been denied that petitioner was engaged as intermittent worker rather petitioner is alleged to be doing the work at his sweet will and that no fictional breaks had ever been given to him. It is denied that petitioner had been given fictional breaks deliberately by the respondent department. It is further claimed the no junior to the petitioner had been retained nor engaged by the respondent. Thus, denying allegation of fictional breaks from time to time as well as final termination, claim petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 4.9.1986, Ex. PW1/C copy of mandays chart of petitioner, Ex. PW1/D copy of mandays chart of Smt. Bhatto Devi and closed evidence. On the other hand, respondent examined RW1 Shri S.P. Sharma, the then Divisional Forest Officer, Pangi tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of mandays chart of petitioner, Ex. RW1/C copy of mandays chart of other co-workers and closed evidence. 7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 15.7.2015 for determination:

1. Whether verbal termination of services of the petitioner by the respondent during the year April, 2009 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that the petitioner as per evidence led by respondent is still employed with the respondent/department and therefore the allegation of final termination is not tenable. Factum of petitioner being engaged as labourer on daily wage basis on muster roll is not in dispute but their remains dispute with regard to time he was factually engaged. As mentioned in his claim petition as well as affidavit, petitioner has maintained to have been employed/engaged by the respondent/department in March, 2000 whereas respondent in its reply has maintained petitioner was engaged as daily waged mazdoor at Purthi range of Pangi forest in May, 2000. Thus controversy can be resolved with the aid of mandays chart Ex. RW1/B which has been relied upon by the respondent stipulating therein that in the year 2000 petitioner was engaged in the month of May when he had worked for 52 days in the said year.

12. The fact that petitioner maintains and reiterates his termination in the April, 2009 it would be relevant to mention the contents of affidavit in examination in- chief. In Ex. PW1/A affidavit of petitioner has specifically alleged that while terminating the services of petitioner time to time from period March, 2000 to 2009 and at the time of his final termination in April, 2009 no show cause notice had been issued or any inquiry was conducted and at the same time, one month's pay in lieu of retrenchment or termination was also not paid. In so far as, petitioner having worked with the respondent for more than 160 days in a year as claimed by him is concerned, it would be relevant to refer to mandays chart Ex. RW1/B which clearly reflects that in the year 2000 petitioner had worked for 52 days, 92 days in 2003, 153 days in 2004, 23 days in 2005, 116 days in 2007, 88 days in 2008 and 24 days in 2009. As per mandays chart Ex. PW1/D of Smt. Bhatto Devi, she is shown to have been engaged in the year 2002 when she worked continuously from the year 2005 till the year 2013 when she is shown to have been worked for 115 days. As per mandays chart of petitioner, he is shown to have been engaged in the month of May, 2000 when he worked for 52

days and was continuously working till the year 2009 when he is shown to have been worked only for 24 days.

13. The list of daily wagers relied upon by the respondent reveals that the workers at serial no. 2 to 29 had joined subsequent to the claimant/petitioner and that workers shown to be serial no. 2 to 25 had been regularized but this evidence could not be interpreted in favour of the petitioner as petitioner as well as respondent in cross-examination has specifically admitted on oath that petitioner was still working with the respondent/department. As such, there can be no violation of the provisions of Section 25-H of the Industrial Disputes Act. At the same time plea of petitioner of verbal termination also goes outright as he himself has deposed that to have been engaged and still working on the date when examined before this court on 11.8.2015. That being so, relief sought for by the claimant/petitioner could not be granted in view of his specific admission. Since the reference dated 27.12.2014 received from appropriate government is concerning verbal termination of petitioner during the year April, 2009 the same has to be answered in negative in view of the fact that petitioner was working with the respondent and as such there can be no verbal termination of the petitioner as referred in the reference received from the appropriate government.

14. In so far as the plea of 'abandonment' by the petitioner as alleged is concerned it has been maintained by the respondent as RW1 on oath that petitioner used to come of his own and attended the work and assumed the work as and when he liked and therefore by not joining regularly or absenting intermittently clearly indicated that he abandoned the job he was assigned but there is no merit in this plea as the respondent had not proved on record any notice was issued qua his unauthorized absence or that any departmental proceedings had been initiated against him. In absence of any such corresponding evidence bald assertion of RW1 could not be relied upon so as to hold that petitioner had abandoned the job, rather absence from duty is serious misconduct requiring initiation of departmental proceedings by the respondent/department and there is no explanation from the side of respondent/department in what circumstances it failed to call explanation of the petitioner qua his unauthorized absence or raised any charge sheet for his willful absence from the duties. It is settled law that plea of abandonment has to be proved like any other fact and were non attendance from duty could not be construed as abandonment from duty particularly in absence of any record produced by respondent that any letter or correspondence was made by respondent on absence of petitioner. As such, plea of abandonment is held to have not been proved. It may be pertinent to state here that there was no final termination of petitioner by respondent in April, 2009 rather the plea of petitioner is itself contradictory as his evidence on record showed that he had been terminated in April, 2009 whereas the plea of respondent on oath remains that he was still working on the date of award being announced. Be it noticed that ld. counsel/AR for petitioner has not disputed correctness of statement of respondent on oath in which he stated that petitioner was working on 28.8.2015 when respondent was cross-examined before the court. As such, plea of final termination as alleged by petitioner merits rejection. Thus, there could be no violation of Section 25-F of Act as neither any notice was required to be given nor compensation in lieu thereof as petitioner is working with respondent whose services had not been terminated as stated above. As such, when petitioner is still in employment, no findings can be given by this court qua final termination of the petitioner. As such, the petitioner is held to be in the employment of respondent whose services are held to have not been finally terminated till now. In view of foregoing discussions, issues no.1 and 2 are answered in negative against the petitioner and in favour of respondent.

ISSUE NO.3

15. Ld. Dy. D.A. representing respondent has contended that the claim petition is not maintainable as the reference received from the appropriate government in which reference pertains

to final termination of the services of petitioner. As such, the plea of petitioner being inconsistent is held to be not maintainable in the present form. Issue is answered in affirmative against the petitioner and in favour of respondent.

RELIEF

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 03/2015

Date of Institution : 13.01.2015

Date of Decision : 07.09.2015

Shri Lekh Ram s/o Shri Maghu Ram, r/o Village Thandal, P.O.Purthi, Tehsil Pangi, District
Chamba, H.P. *. Petitioner.*

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Lekh Ram, S/O Shri Maghu Ram, R/O Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. during April, 1991 to April, 2009 and finally during May, 2009 by the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts of the case as set up in the claim petition reveal that petitioner had been engaged by respondent/department w.e.f. March, 2002 on daily waged basis on muster roll in Killar Range of Pangi and at the time of appointment, no appointment letter or order had been issued by respondent no casual card or attendance card was provided to petitioner from 2002 onwards contrary to the guidelines issued by the Hon’ble High Court in CWP No.559/1984 titled as Jagdev Singh vs. State of H.P. & Others. It is claimed that petitioner had been engaged and disengaged by the department by giving fictional breaks from date of initial appointment so that he did not complete 160 days in each calendar year so as to get the benefit of the provisions of Section 25-B of the Industrial Disputes Act and this practice continued upto March 2009. It is alleged that from March, 2009 while the terminating service of petitioner no show cause notice had been issued to him regarding his misconduct and at the same time, no inquiry was initiated against the petitioner besides no retrenchment compensation was ever paid to the petitioner. It is alleged that at the time of termination of his services, respondent had even not followed the principle of ‘Last come First go’ as junior persons to petitioner had been retained in service continuously without any break. The name of junior persons are stated to be S/Sh. Lekh Raj Syee joined in 1991, Bheem Sen joined in 1992, Nand Lal engaged in 1993, Sher Chand joined in 1994, Kushla Devi engaged in 1995, Bansi Lal joined in 1995, Man Singh joined in 1996, Kewal Ram joined in 1997 and Janam Singh engaged in 1998 and all these workmen have been regularized by the respondent department as per policy of the state government. The act of engagement and disengagement intermittently besides final termination of service of petitioner is stated to be highly arbitrary, illegal and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter called as ‘the Act’ for brevity) and the same constituted unfair labour practice as defined under Vth Schedule Clause 10 of the Act. Accordingly, petitioner has prayed for setting aside the illegal break period from 1985 to April, 2009 in favour of petitioner and has prayed for his regularization after completing 10 years of service or to any other relief petitioner is found entitled.

4. Respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability and that petitioner was still working with the department as such claim of the petitioner finally being terminated in 2011 become in-fructuous. On merits, it is claimed that petitioner had been engaged as daily waged mazdoor in Killar Range of Pangi Forest Division since April, 1991 and not in 1985 as alleged by petitioner. It is maintained that work pertaining forestry was generally of seasonal in nature and on completion of the seasonal work, plantation raised/plants raised in nursery as per the schedule of forestry operations and all activities are discontinued except supervision and protection which is carried out through permanent staff of the respondent/department. As such, fact of violation of Section 25-B has been emphatically denied. It has also been denied that petitioner was engaged as intermittent worker rather petitioner is alleged to be doing the work at his sweet will and that no fictional breaks had even been given to him. It is further maintained that the services of S/Sh. Lekh Raj Syee who joined in 1991, Bheem Sen who joined in 1992, Nand Lal who appointed in 1993, Sher Chand who joined in 1994, Kushla Devi who appointed in 1995, Bansi Lal who joined in 1995, Man Singh who joined in 1996, Kewal Ram who joined in 1997 and Janam Singh who appointed in 1998 have been regularized as they fulfilled

the requisite criteria for regularization per government policy. It is specifically alleged that petitioner still continued to be working with respondent/department. As such, question of final termination did not arise. Thus, denying allegation of fictional breaks from time to time as well as final termination, claim petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC and Ex. PW1/B copy of letter dated 4.9.1986 and closed evidence. On the other hand, respondent examined RW1 Shri S.P. Sharma, the then Divisional Forest Officer, Pangi tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of mandays chart of other co-workers and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 15.7.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year April, 1991 to April, 2009 and finally during May, 2009 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that the petitioner as per evidence led by respondent is held to be still in employment with the respondent/department and therefore the allegation of final termination did not arise. Factum of petitioner being engaged as labourer on daily wage basis on muster roll is not in dispute but their remains dispute with regard to time he

was factually appointed. As mentioned in his claim petition as well as affidavit petitioner has maintained to have been employed/engaged by the respondent/department in the year 1985 whereas respondent in its reply has maintained petitioner was engaged as daily waged mazdoor at Killar range of Pangi forest in April, 1991. Thus controversy can be resolved with the aid of mandays chart Ex. RW1/B which has been relied upon by the respondent stipulating therein that in the year 1991 petitioner was appointed and in said year he had worked for 170 days. There is no evidence on record either led by petitioner or respondent which would show that petitioner was working with the respondent prior to the year 1991. The testimony of petitioner on oath that he was engaged in the year 1985 merits rejection in view of the fact that there is no corresponding records such as muster roll or entry reflected in mandays chart which would show that petitioner was engaged in 1985. At the same time, plea of petitioner that his services had been finally terminated by the respondent in May, 2009 as alleged in his affidavit Ex. PW1/A is certainly not in consonance with evidence on record.

12. In so far as the plea of claimant/petitioner qua final termination in the month of May, 2009 is concerned, it would be relevant to mention here that petitioner in his cross-examination has admitted that he was still working and employed with the respondent/department. Similar version comes from cross-examination on oath of respondent (RW1) who maintained that petitioner was still employed with the respondent/department. As such, it is not at all established that petitioner had been finally terminated in the month of April, 2009 as referred in the reference petition received from the appropriate government. However, on the point of time to time termination of the services of petitioner, suffice would be to state here that as per mandays chart Ex. RW1/B petitioner had worked for 170 days in the year 1991, 200 days in 1992, 136 days in 1993, 161 days in 1994, 163 days in 1995, 128 days in 1996, no work in the year 1997, 72 days in the years 1998, no work in 1999, 2001, 2002 however in 2000 petitioner had shown to have worked for 22 days and therefore in the year 2003 petitioner worked for 86 days, 118 days in 2004, 87 days in 2005, 24 days in 2006, 27 days in 2007, 61 days in 2008 and 30 days in 2009. Stepping into witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein in the manner in which he had been given fictional breaks by the respondent deliberately, contrary to the guidelines issued by the Hon'ble High Court of H.P. in CWP no. 559/1984 case titled Jagdev Singh vs. State of H.P. & Others. He has specifically mentioned his statement that his services had been engaged and disengaged by giving him fictional breaks from his initial date of appointment so that he did not complete 160 days in each calendar year for the purposes of Section 25-B of the Industrial Disputes Act and said termination continued upto April, 2009. He has further stated that while giving fictional breaks to the petitioner, respondent/department has not adhered to the principle of 'Last come First go' envisaged under Section 25-G of the Industrial Disputes Act as several persons junior to him had been retained continuously without any break. He has maintained on oath that S/Shri Lekh Ram Syee (1991), Bheem Sen (1992), Nand Lal (1993), Sher Chand (1994), Kushla Devi (1995), Bansi Lal (1995), Man Singh (1996), Kewal Ram (1997), Janam Singh (1998), Amar Nath (1998), Vijay Kumar (1999) were junior to him whose services have been regularized. He has also alleged that petitioner had raised the industrial dispute against the respondent/department for condoning his illegal break period in continuity of his service and revoke the same but no action was taken due to which a reference was made by Labour Commissioner and during conciliation dispute could not be resolved in pursuance to which failure report was submitted, consequently government had made reference for adjudication. He has also stated that the act of respondent giving fictional breaks was illegal, arbitrary and unconstitutional and same was unfair labour practice within the meaning of Vth Schedule clause 10 of the Industrial Disputes Act. The plea of respondent, on the other hand remained that that the work for which the petitioner was engaged was seasonal in nature and that petitioner used to come and go of his own who was not regular in attending the work and therefore having abandoned the job, it could not be stated that petitioner was given fictional breaks by the respondent. In so far as the plea of work

having been assigned to the petitioner being seasonal in nature is concerned, there is no notification about the work on forest department Pangi to be seasonal in nature and at the same time when other workers as reflected in the seniority list Ex. RW1/C are shown to have been given job more than 165 days continuously and for that reason they were regularized, the only inference that may be drawn is that petitioner had been given fictional breaks by respondent deliberately and the plea of respondent that petitioner himself abandoned the job merits rejection.

13. In so far as the plea of abandonment of the job by petitioner is concerned, it was to be proved by the respondent by leading cogent and convincing evidence but in this case, there is no iota of evidence that respondent had taken any action against the petitioner on his unauthorized absence as neither any legal notice nor any proceedings were initiated against the petitioner. Certainly, several persons junior to the petitioner who joined in service after 1991 to 1997 had not been given break in service and therefore they had been regularized which further strengthens of plea of petitioner that the provisions of Section 25-H of the Act was not followed which can also be construed as unfair labour practice. Since the respondent has adopted the different yardstick in giving work to petitioner and other co-workers, it is to be held that petitioner was deliberately given fictional breaks so that he could not avail the benefit of Section 25-B of the Act. In view of foregoing, there is nothing in the evidence of the respondent which would show that the claim of the petitioner is false with regard to time to time termination however his claim for final termination deserves to be rejected as petitioner himself has deposed on oath to be employed and working with the respondent/department. In so far as the petitioner having remained gainfully employed is concerned, suffice would be to state here that the petitioner in his cross-examination has admitted that he was looking after agriculture from which he had earning/income and thus the petitioner being without earning during break period could not be accepted or that he was not gainfully employed. Issue in question is accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

RELIEF

15. As sequel to my findings on issues nos. 1 to 3, petition is allowed in part and time to time termination of the services of petitioner from April, 1991 to May, 2009 by Divisional Forest Officer, Pangi, Forest Division Killar is held to have been done without complying with the provisions of Industrial Disputes Act and thus petitioner would be entitled for the seniority and continuity of service for period stated above. However, since services of petitioner have not been finally terminated by the respondent, no findings can be given by this Tribunal being beyond the point of reference. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 326/ 2014

Sh. Shakti Chand s/o Sh. Nathu Ram, r/o V.P.O. Chalaharag, Tehsil Joginder Nagar,
District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
. Respondent.

08-09-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.35 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

08-09-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
08-09-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref: No. : 314/2015

Shri Yashwant Singh s/o Shri Mani Ram, r/o Village Shal, P.O. & Sub Tehsil Nihari,
District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. *Respondent.*

15-09-2015 Present: Petitioner with Sh. Abhishek Lakhanpal, adv.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard. The petitioner has made statement that he does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
15.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref: No. : 72/2015

Shri Nirmat Ram s/o Shri Ravi Ram, r/o Village Kharangcha, P.O. Raila, Sub Tehsil Sainj,
District Kullu, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Greater Himalayan National Park Shamshi, District Kullu,
H.P. . . *Respondent.*

15-09-2015 Present: Petitioner with Sh. D.S. Thakur, adv.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard. The petitioner has made statement that he does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
15.09.2015

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref: No. : 75/2015

Shri Sher Singh s/o Shri Kalmi Ram, r/o Village Majharna, P.O. Raila, Sub Tehsil Sainj,
District Kullu, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Greater Himalayan National Park Shamshi, District Kullu, H.P. . .Respondent.

15-09-2015 Present: Petitioner with Sh. D.S. Thakur, adv.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard. The petitioner has made statement that he does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

5. The file, after completion be consigned to the records.

Announced:
15.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref: No. : 335/2014

Chairman/Secretary, Koldam Lift Drinking Water Scheme Employees Union, c/o Shri Hem Raj, Village Delag, P.O. Nichali Bhater, Tehsil Sadar, District Bilaspur, H.P. . .Petitioner.

Versus

The Managing Director, M/s S.M.C./S.B.M. Universal (JV) Lakhanpur, Tehsil Sadar, District Bilaspur, H.P. . .Respondent.

16-09-2015 Present: Sh. Daya Ram Bhardwaj, Chairman, Koldam Lift Drinking Water Scheme Employees Union in person.

None for the respondent.

Heard. Sh. Daya Ram Bhardwaj above named has testified on oath that he wants to withdraw case against the respondent in his capacity as Chairman besides stated that all the workers of the Union have been regularised and has thus prayed for dismissal of present reference as

withdrawn. Sh. Hem Raj s/o Sh. Sukh Ram another worker of Union present in the Court has identified the petitioner besides he tendered his I.D. proof which is placed on record. In view of the statement made by the petitioner/claimant aforesaid, the present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
16.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 338/2014

Sh. Labu Chhering s/o Sh. Angrup Thuktan, r/o Village- Langcha, P.O. Hikkam, Distt. Lahaul & Spiti, H.P. *. .Petitioner.*

Versus

The Executive Engineer, HPPWD Division Kaza, Distt. Lahaul & Spiti, H.P. *. .Respondent.*

26-09-2015 Present: Sh. N.L. Kaundal, A.R. for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard. Case is fixed for petitioner's evidence today but Id. Authorised Representative for the petitioner has made statement qua withdrawl of claim petition by stating that petitioner was deaf and dumb besides being illiterate. He has made statement for withdrawal of claim petition with liberty to file fresh claim as well as to agitate the dispute afresh before the Competent Authority by appointing guardian of the claimant/petitioner in the circumstances of the case. Statement recorded and placed on record. In view of the statement so made by Id. Authorised Representative for the petitioner, the claim petition is dismissed as withdrawn with liberty to file case afresh before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.

4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

5. The file, after completion be consigned to the records.

Announced:
26.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref: No. : 314/2015

Shri Yashwant Singh s/o Shri Mani Ram, r/o Village Shal, P.O. & Sub Tehsil Nihari,
District Mandi, H.P. *.Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
.Respondent.

15-09-2015 Present: Petitioner with Sh. Abhishek Lakhanpal, adv.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard. The petitioner has made statement that he does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
15.09.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 182/2015

Date of Institution : 21.4.2015

Date of decision : 29.09.2015

Shri Raj Kumar s/o Shri Chattarbhuji, r/o Village Kanathu, P.O. Phatahar, Tehsil Baijnath,
District Kangra, H.P. *. .Petitioner.*

Versus

1. The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla.
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *. .Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent(s)	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Shri Raj Kumar S/O Shri Chattarbhuji, R/O Village Kanathu, P.O. Phatahar, Tehsil Baijnath, District Kangra, H.P. before the (1) Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. vide demand notice dated 11.09.2009 regarding his alleged illegal termination of service during April 2003 suffers from delay and latches? If not, Whether termination of the services of Shri Raj Kumar S/O Shri Chattarbhuji, R/O Village Kanathu, P.O. Phatahar, Tehsil Baijnath, District Kangra, H.P. employed as daily wage Peon in the Indo German Changer Project, Palampur, District Kangra, H.P., managed by the H.P. Eco Development Society, on the completion of project during April, 2003 by the (1) Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis as Peon in Indo German Changer Project w.e.f. March, 1994 by the respondents but no appointment order/letter was issued and at the same time no terms and conditions were settled by respondents and that petitioner worked upto March, 2003. It is claimed that during the service period, work and conduct of the petitioner had been satisfactory and upto the mark who had never given any chance to his superior regarding any

complaint. It is claimed that petitioner had worked for 240 days in each calendar year and was duly covered under the definition of continuous service as defined under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity). It is contended that Indo German Changar Project Palampur (hereinafter called IGCP Palampur) was started under control of State Government of H.P. and that the services of petitioner had been terminated by the department in the month of March, 2003 as per verbal order on the ground that funds and work were not available and his service were no more required by respondents. It is further alleged that no show cause notice was served upon the petitioner besides neither any inquiry had been conducted against the petitioner nor one month pay in lieu of notice period and retrenchment compensation had been paid to the petitioner and that termination of service of petitioner was null, void and ab-initio. The grievance of petitioner further remains that petitioner had been working with the other co-workers namely S/Sh. Desh Raj, Vijay Kumar, Achhar singh, Desh Raj, Bhupender Singh, Gian Chand, Meenakshi Sood, Meenakshi Sharma, Kuldeep Singh Jamwal, Rakesh Chand and Sandeep Rana whose services had been retrenched by the respondent/department w.e.f. 31.3.2006 on the ground of completion of Indo German Changer Project and thereafter all the abovestated workmen had raised the dispute before this court when the respondent/department was directed to reinstate them in service with seniority and continuity in service. It is claimed that at the time of termination of the services of petitioner, respondent had not followed the principle of 'Last come First go' as some junior persons namely Desh Raj, (26.10.1996), Bhupender Singh (1.6.1997) and Gian Chand (15.7.1997) were retained in service by the respondent and the respondent had thus violated provisions of Section 25-G of the Act. Thereafter, petitioner had made so many requests before the respondent/department regarding his reinstatement in service but of no avail however petitioner had raised demand notice dated 9.11.2009 and the same had been forwarded to Labour Officer, Dharamshala. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is claimed that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 1130/2015 which was decided on 25.2.2015 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. Claiming that the act of respondent to retrench the services of petitioner w.e.f. April, 2003 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the

Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated April, 2003 with further direction to respondent to reengage petitioner with full back wages, seniority, continuity in service with all consequential service benefits throughout with costs of litigation.

4. The respondents resisted the claim petition, filed joint reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, it is contended that petitioner had been engaged purely on temporary basis subject to availability of funds to help the people of the changer areas in their daily living life. It is contended that petitioner was engaged as daily wagger during 1.4.2000 on bill basis as per exigency of work in Indo German Changer Project (IGCP) Palampur and not w.e.f. March, 1994. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D letter dated 10.3.2006, Ex. PW1/E letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/F letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wagger workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/H copy of mandays of Atma Ram & others, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K copy of notice, Ex. PW1/L copy of letter dated 30.7.2013, Ex. PW1/M letter dated 22.9.2014, Ex. PW1/N details of employees who appointed on secondment basis, Ex. PW1/O copy of letter dated 11.9.2014, Ex. PW1/P copy of letter dated 18.9.2014, Ex. PW1/Q detail of class-IV staff engaged after 3.12.2009, Ex. PW1/R copy of certificate, Ex. PW1/S copy of letter dated 13.5.2010, Ex. PW1/T copy of letter dated 27.2.2010, Ex. PW1/U copy of mandays chart of petitioner and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner, Exts. RW1/C1 to RW1/C23 copies of vouchers & Marck A copy of mandays of Mohinder Singh & others and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed on 04.7.2015 which were subsequently recasted/reframed afresh for determination on 26.9.2015 on which parties did not lead any further evidence relying upon evidence already led on record.

7. Whether the industrial dispute raised by petitioner vide demand notice dated 11.9.2009 qua his termination of service during April, 2003 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
8. Whether termination of the services of petitioner as daily wage peon by the respondent w.e.f. April, 2003 is/was illegal and unjustified as alleged? . . .*OPP*.
9. If issues nos.1 and 2 are proved in affirmative to what service benefits the petitioner is entitled to? *OPP*
10. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
11. Whether the claim petition is bad for non-joinder of the necessary party as alleged? . . .*OPR*.

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Discussed

Issue No.4 : Yes

Issue No.5 : No

Relief : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. He has pointed that retrenchment of petitioner had allegedly taken place in April, 2002 but the dispute was raised after several years of retrenchment when demand notice dated 11.9.2009 regarding petitioner's illegal termination was raised. Thus, claim petition being bad on account of delay and laches does not entitle petitioner relief sought for. Ld. Authorized Representative for petitioner, on the other hand repudiating the arguments advanced by ld. Dy. D.A. has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which Hon'ble High Court specifically held that delay in raising dispute may be considered by court at the time of granting relief however in various other judgments even longer delay had been condoned. Ld. Authorized Representative has relied upon the judgment titled as **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160** in which delay of more than 10 years was condoned

and Hon'ble High Court has specifically held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it was held that the principle of Limitation Act did not apply to the proceeding under the Industrial Disputes Act besides has categorically held that claim of petitioner cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact as has been held by Hon'ble Apex Court reported in **AIR 1979 SC 582** and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that petitioner visited personally several times requesting respondents to reinstatement him in service but all in vain and then petitioner has raised industrial dispute vide demand notice dated 9.11.2009 which had been forwarded to Labour Officer, Dharamshala. It has been also alleged in the petition filed by petitioner that Labour Officer has tried to settle the dispute but of no avail and thereafter Labour cum-Conciliation Officer, Dharamshala submitted failure report envisaged under Section 12 (4) of the Industrial Disputes Act by referring to the appropriate govt. for making reference. It is evident from the affidavit that claimant/petitioner after his retrenchment kept approaching respondent for his reinstatement and when they did not adhere to his request, he has raised demand notice being before the Labour Officer and when matter was pending before Labour Commissioner who declined to make reference to this court. Thereafter, petitioner had approached Hon'ble High Court filing CWP 1130/2015 which was allowed and thereafter reference was made by Labour Commissioner. The petitioner had sufficient reason to approach the Labour Court after the order of Hon'ble High Court dated 22.2.2015 passed in CWP no. 1130/2015 the petitioner had approached the court by filing claim petition explaining the delay as there were circumstances beyond his control. As such, the claim filed by petitioner could not be stated to be hit by delay and laches. Issue in hand is decided in negative in favour of petitioner and against respondent.

ISSUE NO.2

12. At the outset, it is apt to mention here that from pleading and evidence led by petitioner, it could not be concluded with certainty if petitioner had worked with respondent from March, 1994 till March, 2003 as maintained in his affidavit Ex. PW1/A as petitioner has made inconsistent facts in para no.1 of affidavit by stating that he had worked from March, 1994 till March, 2003 and at the same time in same affidavit in subsequent para no. 2, the services of petitioner are stated to have been unlawfully terminated by respondent department w.e.f. 31st March, 2006 when project in question was closed without prior notice. Contrary to the plea of claimant/petitioner, respondent claimed to have never retrenched the services of petitioner as he of his own did not resume duty after April, 2004 besides there is dispute about the year in which petitioner was engaged. Be it noticed that in his claim petition as well as evidence, petitioner has maintained that he was appointed in March, 1994 whereas respondent has pleaded that petitioner was appointed on 1st April, 2000 as daily wage on bill basis as per exigency of work in Indo German Changer Project and not in March, 1994. The fact that petitioner was engaged in the year 2002 who remained engaged till April, 2002 finds support from mandays chart Ex. RW1/B relied upon by the respondent which shows that petitioner had joined in April, 2000 and in the said year he worked for 238 days, 287 days in 2001 and lastly he worked for 120 days in the year 2002. Thus, plea of claimant/petitioner is that he worked from March, 1994 till April, 2003 gets belied from documentary evidence on record. Be it noticed that petitioner has also relied upon certificate Ex. PW1/R issued by Team Leader, Indo-German Changer Eco-Development Project Palampur showing him to have worked w.e.f. 1.3.1994 to 30.4.2002 but no corresponding record such as mandays chart has been produced on record by either of the parties which would establish that

petitioner was engaged in Indo-German Changer Eco-Development Project, Palampur as peon as mentioned in the certificate Ex. PW1/R. Thus, prima facie petitioner on the basis of mandays chart relied upon by respondent Ex. RW1/B clearly establishes that in the year 2001 petitioner had worked for more than 240 days and remained engaged with respondent till 30th April, 2002. The plea of petitioner remains that he had worked upto 2003 which get falsified from mandays chart referred above. That being so, it would be unsafe to hold that petitioner had actually remained engaged with the respondent till 2003.

13. It has rightly been contended by Id. Authorized Representative for the petitioner that plea of abandonment has to be proved like any other fact and merely because the claimant/petitioner did not resume duty after a specific period did not establish that he had abandoned the job particularly when there is no iota of evidence led by respondent which would show that office of respondent had issued any notice on absence of the petitioner and thus bald plea of respondent that petitioner had left the job of his own is not at all substantiated from corresponding evidence to this effect. As such, this court is left with no option but hold that petitioner had not actually abandoned the job rather his services had been retrenched in April, 2002. If petitioner had been retrenched in April, 2002, in order to seek protection under Section 25-F of the Industrial Disputes Act, it is required be established that before 30th April, 2002 petitioner had worked more than 240 days. As such, petitioner is not entitled to protection envisaged under Section 25-F of the Industrial Disputes Act and it could not be stated that petitioner was unlawfully retrenched by the respondent/department because as per reference petitioner was retrenched in April, 2003 but mandays chart Ex. RW1/B establishes that petitioner had never worked after 30th April, 2002.

14. It is settled law that this court cannot travel beyond the terms of reference and therefore the question of termination the services of petitioner w.e.f. April, 2003 by respondent cannot gone into by this court. It has come in the evidence of petitioner that petitioner had been disengaged in April, 2002 whereas the reference from the appropriate government revealed that services of petitioner had been terminated w.e.f. April, 2003 by respondent. The crux of the problem which falls for adjudication is that petitioner had worked till April, 2002 i.e. say till April, 2003 or if he also worked after the year 2002 which is crucial point for determination. It has been contended by Id. Dy. D.A. for state that if petitioner is held to have worked in the year 2002 this court cannot give findings beyond the point of reference made by the appropriate government. On the contrary, repudiating the arguments advanced by Id. Dy. D.A. for the respondent has contended that as per Ex. RW1/B the copy of mandays chart, it could be concluded with certainty that petitioner had factually worked till the month of April, 2002 which proved that petitioner was not employed with respondent after April, 2002. Id. counsel for petitioner has also contended with vehemence that there is no reliable evidence on record showing that petitioner has factually worked upto April, 2002 only and not thereafter.

15. In so far as the plea of violation of provisions of Section 25-G of the Industrial Disputes Act is concerned, it is alleged in para no. 6 of the affidavit Ex. PW1/A that respondent had not followed the principle of 'Last come First go' and retained some junior persons in service namely Desh Raj who joined in 26.10.1996, Bhupender Singh who joined in 1.6.1997 and Gian Chand who joined in 15.7.1997. Be it stated here that the name of claimant/petitioner is not shown in seniority list which is manifestly unfair labour practice in view of the judgment reported in **2015 LLR 337 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees' Union** in which Hon'ble Apex Court has held that non preparation of seniority list or non display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act, 1947, justifying the retrenchment of the workmen to be illegal. Applying the ratio of abovestated judgment to the present case it would not be erroneous to observe here that respondent has failed to bring on record any seniority list which is certainly in breach of Section 25-G of the Industrial Disputes Act. Be it

stated here that there is no reliable evidence showing that workers who joined latter have been retained in service and that the petitioner who joined in the year 2000 as per the case of respondent in view of evidence on record, it could not be stated that respondent had omitted to follow guidelines envisaged under Section 25-G of the Industrial Disputes Act as all the persons in para no.6 of the affidavit had joined in the years 1996 and 1997 respectively whereas affidavit of Shri B.S. Yadav, the then Divisional Forest Officer Ex. RW1/A coupled with mandays chart Ex. RW1/B clearly established that petitioner had joined in the year 2000 and remained engaged in the year 2002. As such, plea of violation of the provisions of Section 25-G of the Industrial Disputes Act gets falsified from oral evidence as well as documentary evidence on record. In view of forgoing discussions the services of petitioner could not be stated to be terminated by respondent w.e.f. April, 2003 illegally and unjustified manner rather petitioner had worked upto April, 2002. As such, issue in hand is answered in negative. Since issue no.2 is answered negative, issue no. 3 is also answered in negative and that the petitioner is not entitled for service benefits as claimed by him.

ISSUE NO.4

16. Ld. Dy. D.A. representing respondent/department has contended with vehemence that present claim petition is not maintainable in view of the fact that reference made by appropriate govt. made qua illegal termination of service petitioner as daily wage peon w.e.f. April, 2003 whereas per the evidence of respondent and placed on record it is established that petitioner remained engaged with the respondent till April, 2002. Since petitioner was no more working in the year 2003 this court is left with no jurisdiction to adjudicate controversy qua year 2003 when factually petitioner was not in service. Thus, claim petition is not maintainable. This issue is answered in favour of respondent and against the petitioner.

ISSUE NO.5

17. This issue was not pressed during the course of arguments by ld. Dy. D.A. for respondent, however, there is no specific pleadings about any necessary party to have not been joined by the petitioner/claimant at the time of filing of petition. As such, plea of non-joinder of necessary party merits rejection and for the aforesaid reason, it is held that claim petition is not bad for non joinder of necessary party. This issue decided accordingly.

RELIEF

18. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 337/2014

Date of Institution : 16.12.2014

Date of decision : 30.09.2015

Smt. Chhering Dolma w/o Sh. Chhering Dorje, r/o Village Langcha, P.O. Hikkam, Distt. Lahaul & Spiti, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division Kaza, Distt. Lahaul & Spiti, H.P. . . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Chhering Dolma W/O Sh. Chhering Dorje, R/O Village –Langcha, P.O. Hikkam, Distt. Lahaul & Spiti, H.P. from the year, 2001 to the year, 2012 by the Executive Engineer, HP PWD Division Kaza, Distt. Lahaul & Spiti, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the respondent on muster roll basis w.e.f. June 2001 who worked upto 2012 and during the abovestated period petitioner had completed more than 160 days in some calendar years and did not complete 160 days in some year due to fictional breaks which were given by the respondent/department. The petitioner claims to have worked for 29 days in 2001, 139 days in 2002, 169 days in 2003, 114 days in 2004, 167 days in 2005, 152 days in 2006, 167 days in 2007, 109 days in 2008, 74 days in 2009, 66 days in 2010 and 89 days in 2011. Averments made in claim petition further reveal that the services of petitioner were disengaged from time to time as she was given fictional breaks w.e.f. 2001 to October, 2014 without serving any notice for retrenchment or fictional breaks given to petitioner as well as not paid retrenchment compensation under Section 25-F (a) & (b) of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It is alleged that petitioner never absented willfully from her service but fictional breaks had been given to her by the respondent/department. It is submitted that as per letter issued by Principal Secretary (PW) to the Government of H.P. regarding providing muster roll for whole months to the workers

in HPPWD without breaks instead of 15/18/20 or 30 days intermittent breaks vide his letter no. PBW-A-II (1)-6/2003 dated 14.9.2007 but respondent had not followed the instruction of the government and respondent of his own level had given fictional breaks to the petitioner. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Chhetan Gatuk, Sonam Palden and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. The act and conduct of the respondent is thus alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Act. The petitioner has thus prayed for setting aside the breaks period and respondent be directed to count the breaks period toward his continuity in service and also for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objection qua non-maintainability as no legal or fundamental right of the petitioner has been infringed. On merits, engagement of the services of the petitioner from June, 2001 is admitted. However, it has been pleaded that the petitioner was employed by the respondent as daily waged beldar on muster roll basis and she worked intermittently with the respondent and no fictional breaks were ever given to him. It is stated that the government has fixed the criteria for continuous service as 160 days for Lahaul are of Lahaul & Spiti District and Pangi Sub Division of Chamba District and 180 days for Kinnaur District and Spiti Sub Division of Lahaul & Spiti District. The case of respondent also remained that the workers in respondent department were being engaged in view of urgency of work and availability of funds besides region of the Spiti Valley exist at high altitude and snow bound area so the development activities remain closed during winter season. However, allegation of artificial breaks having been given to the petitioner by the respondent/department deliberately is denied as alleged so as to deprive the petitioner to complete requisite number of days rather petitioner is claimed to have never completed 180 days in any calendar year and as such the respondent had not violated any provision of the Act. It is stated that the services of petitioner as daily waged were engaged during summer season when developmental activities of the department taken place in snow bound region of Spiti valley and engagement was made w.e.f. April to September subject to availability of funds. It is stated that the services of petitioner were not utilized during winter season as he was engaged on Kaza Langza road besides principle of 'Last come First go' is claimed to have been followed by the respondent and thus question of violation of provisions of Section 25-G of the Act did not arise. It has been emphatically denied that petitioner had ever completed 180 days in any calendar year. Moreover, petitioner was gainfully employed as an agriculturist for her livelihood for the break period in dispute. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and accordingly petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Virender Kumar the then Executive

Engineer, HPPWD Kaza as RW1 tendered/proved Ex. RW1/B mandays chart of petitioner, Ex. RW1/C copy of letter dated 7th May, 2015 regarding regularization of daily waged workers/contingent paid workers, Ex. RW1/D copy of letter dated 18.6.2011 and Exts. RW1/E1 to E3 and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 30.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year 2001 to 2012/ is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 2001 is not in dispute. It is the admitted case of petitioner that petitioner had worked since June, 2001 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 160/180 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner on her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Tashi Angdui, Chhering Lottey, Anita Devi, Chhering

Dolma, Rinchen Chhomo, Chhering Dolma and Mingur Sonam have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/B would reveal that in the year 2001 petitioner had worked for 29 days, 139 days in 2002, 169 days in 2003, 114 days in 2004, 167 days in 2005, 152 days in 2006, 167 days in 2007, 109 days in 2008, 74 days in 2009, 66 ½ days in 2010, 89 days in 2011, 90 days in 2012, 113 days in 2013, and 123 days in 2014. It can be noticed that petitioner has worked for less than 180 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001. Thus, break in service being within a period of eleven years from her termination was definitely a fictional break. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/E1 on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2005 whereas petitioner had joined in June, 2001. Since respondent had not disputed to have engaged petitioner in June, 2001, she ought to have been regularized having continuously worked for about 11 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined alongwith her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2001 to 2012 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 180 days in a calendar year. In cross-examination, she has admitted that she has been not provided work more than 180 days of work w.e.f. 2001 to 2012 which means the dispute is only for the years 2001 to 2012 as stated in the affidavit. RW1 Shri Virender Kumar, Executive Engineer, HPPWD, Kaza has admitted in cross-examination that seniority list Ex. RW1/E1 of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 180 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2001 to 2012 but he could not produce any corresponding record establishing that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Ld. Authorized Representative representing claimant/petitioner has relied upon the judgment titled as **State of H.P. vs. Bhagat Ram & another** in which the Hon'ble High Court of H.P. has held that merely raising plea of abandonment is nothing which has to be established on the basis of facts. The Hon'ble Court in above judgment relied upon judgment of Hon'ble Apex Court reported in **AIR 1979 SC 582** titled as **G.T. Land & Ors. vs. Chemicals & Fibres India Ltd.** in which Hon'ble Apex Court in unambiguous terms held that finding of abandonment is a fact and same has to be substantiated by leading evidence. Applying the ratio of abovestated judgment to case in hand it can be safely held that plea of abandonment raised by respondent merits rejection. In view of foregoing plea of fictional break

given to the petitioner from the year 2001 to 2012 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that the names figured at serial no. 1 to 8 who joined in 2002 as per Ex. RW1/E1 has been regularized but they were not given any fictional break from their initial appointment which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2001 to 2012 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 339/2014

Date of Institution : 16.12.2014

Date of decision : 30.09.2015

Smt. Chhewang Lamo w/o Shri Nawang Zinpa, r/o Village & P.O. Kaza, Distt. Lahaul & Spiti, H.P. . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division Kaza, Distt. Lahaul & Spiti, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Chhewang Lamo W/O Sh. Nawang Zinpa, R/O Village & P.O. Kaza, Distt. Lahaul & Spiti, H.P. from the year, 2003 to the year, 2012 by the Executive Engineer, HP PWD Division Kaza, Distt. Lahaul & Spiti, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the respondent on muster roll basis w.e.f. April, 2003 who worked upto 2012 and during the abovestated period petitioner had completed more than 160 days in some calendar years and did not complete 160 days in some year due to fictional breaks which were given by the respondent/department. The petitioner claims to have worked for 77 days in 2003, 109 days in

2004, 131 days in 2005, 128 days in 2006, 138 days in 2007, 90 days in 2008, 119 days in 2009, 65 ½ days in 2010 and 81 days in 2011. Averments made in claim petition further reveal that the services of petitioner were disengaged from time to time as she was given fictional breaks w.e.f. 2003 to October, 2014 without serving any notice for retrenchment or fictional breaks given to petitioner as well as not paid retrenchment compensation under Section 25-F (a) & (b) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It is alleged that petitioner never absented willfully from her service but fictional breaks had been given to her by the respondent/department. It is submitted that as per letter issued by Principal Secretary (PW) to the Government of H.P. regarding providing muster roll for whole months to the workers in HPPWD without breaks instead of 15/18/20 or 30 days intermittent breaks vide his letter no. PBW-A-II (1) 6/2003 dated 14.9.2007 but respondent had not followed the instruction of the government and respondent of his own level had given fictional breaks to the petitioner. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Chhetan Gatuk, Sonam Palden and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. The act and conduct of the respondent is thus alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Act. The petitioner has thus prayed for setting aside the breaks period and respondent be directed to count the breaks period toward his continuity in service and also for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objection qua non-maintainability as no legal or fundamental right of the petitioner has been infringed. On merits, engagement of the services of the petitioner from April, 2003 is admitted. However, it has been pleaded that the petitioner was employed by the respondent as daily waged beldar on muster roll basis and she worked intermittently with the respondent and no fictional breaks were ever given to him. It is stated that the government has fixed the criteria for continuous service as 160 days for Lahaul are of Lahaul & Spiti District and Pangi Sub Division of Chamba District and 180 days for Kinnaur District and Spiti Sub Division of Lahaul & Spiti District. The case of respondent also remained that the workers in respondent department were being engaged in view of urgency of work and availability of funds besides region of the Spiti Valley exist at high altitude and snow bound area so the development activities remain closed during winter season. However, allegation of artificial breaks having been given to the petitioner by the respondent/department deliberately is denied as alleged so as to deprive the petitioner to complete requisite number of days rather petitioner is claimed to have never completed 180 days in any calendar year and as such the respondent had not violated any provision of the Act. It is stated that the services of petitioner as daily waged were engaged during summer season when developmental activities of the department taken place in snow bound region of Spiti valley and engagement was made w.e.f. April to September subject to availability of funds. It is stated that the services of petitioner were not utilized during winter season as he was engaged on Kaza Langza road besides principle of 'Last come First go' is claimed to have been followed by the respondent and thus question of violation of provisions of Section 25-G of the Act did not arise. It has been emphatically denied that petitioner had ever completed 180 days in any calendar year. Moreover, petitioner was gainfully employed as an agriculturist for her livelihood for the break period in dispute. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and accordingly petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Virender Kumar the then Executive Engineer, HPPWD Kaza as RW1 tendered/proved Ex. RW1/B mandays chart of petitioner, Ex. RW1/C copy of letter dated 7th May, 2015 regarding regularization of daily waged workers/contingent paid workers, Ex. RW1/D copy of letter dated 18.6.2011 and Exts. RW1/E1 to E3 and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 30.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year 2003 to 2012/ is/was illegal and unjustified as alleged? . .*OPP.*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. April, 2003 is not in dispute. It is the admitted case of petitioner that petitioner had worked since June, 2001 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 160/180 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented

several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner on her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Tashi Angdui, Chhering Lottey, Anita Devi, Chhering Dolma, Rinchen Chhomo, Chhering Dolma and Mingur Sonam have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/B would reveal that in the year 2003 petitioner had worked for 77 days, 109 days in 2004, 131 days in 2005, 128 days in 2006, 138 days in 2007, 90 days in 2008, 119 days in 2009, 65 ½ days in 2010, 81 days in 2011, 64 days in 2012, 115 days in 2013 and 106 days in 2014. It can be noticed that petitioner has worked for less than 180 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2003. Thus, break in service being within a period of eleven years from her termination was definitely a fictional break. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/E1 on record in which all the persons named above are shown to have joined in the years 2004 and 2005 whereas petitioner had joined in April, 2003. Since respondent had not disputed to have engaged petitioner in April, 2003, she ought to have been regularized having continuously worked for about 11 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2003 to 2012 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 180 days in a calendar year. In cross-examination, she has admitted that she has been not provided work more than 180 days of work w.e.f. 2003 to 2012 which means the dispute is only for the years 2003 to 2012 as stated in the affidavit. RW1 Shri Virender Kumar, Executive Engineer, HPPWD, Kaza has admitted in cross-examination that seniority list Ex. RW1/E1 of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 180 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2003 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2003 to 2012 but he could not produce any corresponding record establishing that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Ld. Authorized Representative representing claimant/petitioner has relied upon the judgment titled as **State of H.P. vs. Bhagat Ram & another** in which the Hon'ble High Court of H.P. has held that merely raising plea of abandonment

is nothing which has to be established on the basis of facts. The Hon'ble Court in above judgment relied upon judgment of Hon'ble Apex Court reported in **AIR 1979 SC 582** titled as **G.T. Land & Ors. vs. Chemicals & Fibres India Ltd.** in which Hon'ble Apex Court in unambiguous terms held that finding of abandonment is a fact and same has to be substantiated by leading evidence. Applying the ratio of abovestated judgment to case in hand it can be safely held that plea of abandonment raised by respondent merits rejection. In view of foregoing plea of fictional break given to the petitioner from the year 2003 to 2012 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that the names figured at serial no. 8 who joined in 2005 as per Ex. RW1/E1 has been regularized but she was not given any fictional break from her initial appointment which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2003 to 2012 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room. Announced in the open Court today this 30th day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 340/2014

Date of Institution : 16.12.2014

Date of decision : 30.09.2015

Smt. Sonam Butith d/o Shri Angrup Thuktan, r/o Village Langcha, P.O. Hikkam, Distt. Lahaul & Spiti, H.P. . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division Kaza, Distt. Lahaul & Spiti, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Sonam Butith D/O Sh. Angrup Thuktan, R/O Village –Langcha, P.O. Hikkam, Distt. Lahaul & Spiti, H.P. during the year, 2001 to the year, 2012 by the Executive Engineer, HP PWD Division Kaza, Distt. Lahaul & Spiti, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the respondent on muster roll basis w.e.f. August 2001 who worked upto 2012 and

during the abovestated period petitioner had completed more than 160 days in some calendar years and did not complete 160 days in some year due to fictional breaks which were given by the respondent/department. The petitioner claims to have worked for 30 days in 2001, 109 days in 2002, 169 days in 2003, 113 days in 2004, 167 days in 2005, 152 days in 2006, 167 days in 2007, 88 days in 2008, nil days in 2009, 67 days in 2010 and 89 days in 2011. Averments made in claim petition further reveal that the services of petitioner were disengaged from time to time as she was given fictional breaks w.e.f. 2001 to October, 2014 without serving any notice for retrenchment or fictional breaks given to petitioner as well as not paid retrenchment compensation under Section 25-F (a) & (b) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It is alleged that petitioner never absented willfully from her service but fictional breaks had been given to her by the respondent/department. It is submitted that as per letter issued by Principal Secretary (PW) to the Government of H.P. regarding providing muster roll for whole months to the workers in HPPWD without breaks instead of 15/18/20 or 30 days intermittent breaks vide his letter no. PBW-A-II (1)-6/2003 dated 14.9.2007 but respondent had not followed the instruction of the government and respondent of his own level had given fictional breaks to the petitioner. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Chhetan Gatuk, Sonam Palden and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. The act and conduct of the respondent is thus alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Act. The petitioner has thus prayed for setting aside the breaks period and respondent be directed to count the breaks period toward his continuity in service and also for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objection qua non-maintainability as no legal or fundamental right of the petitioner has been infringed. On merits, engagement of the services of the petitioner from August, 2001 is admitted. However, it has been pleaded that the petitioner was employed by the respondent as daily waged beldar on muster roll basis and she worked intermittently with the respondent and no fictional breaks were ever given to him. It is stated that the government has fixed the criteria for continuous service as 160 days for Lahaul are of Lahaul & Spiti District and Pangi Sub Division of Chamba District and 180 days for Kinnaur District and Spiti Sub Division of Lahaul & Spiti District. The case of respondent also remained that the workers in respondent department were being engaged in view of urgency of work and availability of funds besides region of the Spiti Valley exist at high altitude and snow bound area so the development activities remain closed during winter season. However, allegation of artificial breaks having been given to the petitioner by the respondent/department deliberately is denied as alleged so as to deprive the petitioner to complete requisite number of days rather petitioner is claimed to have never completed 180 days in any calendar year and as such the respondent had not violated any provision of the Act. It is stated that the services of petitioner as daily waged were engaged during summer season when developmental activities of the department taken place in snow bound region of Spiti valley and engagement was made w.e.f. April to September subject to availability of funds. It is stated that the services of petitioner were not utilized during winter season as he was engaged on Kaza Langza road besides principle of 'Last come First go' is claimed to have been followed by the respondent and thus question of violation of provisions of Section 25-G of the Act did not arise. It has been emphatically denied that petitioner had ever completed 180 days in any calendar year. Moreover, petitioner was gainfully employed as an agriculturist for her livelihood for the break period in

dispute. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and accordingly petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Virender Kumar the then Executive Engineer, HPPWD Kaza as RW1 tendered/proved Ex. RW1/B mandays chart of petitioner, Ex. RW1/C copy of letter dated 7th May, 2015 regarding regularization of daily waged workers/contingent paid workers, Ex. RW1/D copy of letter dated 18.6.2011 and Exts. RW1/E1 to E3 and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 30.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year 2001 to 2012 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. August, 2001 is not in dispute. It is the admitted case of petitioner that petitioner

had worked since June, 2001 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 160/180 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner on her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Tashi Angdui, Chhering Lottey, Anita Devi, Chhering Dolma, Rinchen Chhomo, Chhering Dolma and Mingur Sonam have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/B would reveal that in the year 2001 petitioner had worked for 30 days, 109 days in 2002, 169 days in 2003, 113 days in 2004, 167 days in 2005, 152 days in 2006, 167 days in 2007, 88 days in 2008, 67 ½ days in 2010, 89 days in 2011, 90 days in 2012, 115 days in 2013, and 124 days in 2014. It can be noticed that petitioner has worked for less than 180 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001. Thus, break in service being within a period of eleven years from her termination was definitely a fictional break. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/E1 on record in which all the persons named above are shown to have joined in the years 2002, 2003, 2004 and 2005 whereas petitioner had joined in August, 2001. Since respondent had not disputed to have engaged petitioner in August, 2001, she ought to have been regularized having continuously worked for about 11 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined alongwith her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2001 to 2012 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 180 days in a calendar year. In cross-examination, she has admitted that she has been not provided work more than 180 days of work w.e.f. 2001 to 2012 which means the dispute is only for the years 2001 to 2012 as stated in the affidavit. RW1 Shri Virender Kumar, Executive Engineer, HPPWD, Kaza has admitted in cross-examination that seniority list Ex. RW1/E1 of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 180 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2001 to 2012 but he could not produce any corresponding record establishing that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for

her absence from duty at any point of time. Ld. Authorized Representative representing claimant/petitioner has relied upon the judgment titled as **State of H.P. vs. Bhagat Ram & another** in which the Hon'ble High Court of H.P. has held that merely raising plea of abandonment is nothing which has to be established on the basis of facts. The Hon'ble Court in above judgment relied upon judgment of Hon'ble Apex Court reported in **AIR 1979 SC 582** titled as **G.T. Land & Ors. vs. Chemicals & Fibres India Ltd.** in which Hon'ble Apex Court in unambiguous terms held that finding of abandonment is a fact and same has to be substantiated by leading evidence. Applying the ratio of abovestated judgment to case in hand it can be safely held that plea of abandonment raised by respondent merits rejection. In view of foregoing plea of fictional break given to the petitioner from the year 2001 to 2012 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that the names figured at serial no. 1 to 8 who joined in 2002, 2003 and 2005 as per Ex. RW1/E1 has been regularized but they were not given any fictional break from their initial appointment which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2001 to 2012 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of September, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

व अदालत श्री अनिल भारद्वाज कार्यकारी दण्डाधिकारी डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री दौलत राम पुत्र श्री किरपा राम, निवासी गांव द्रवी, डाकघर डलहौजी कैंट, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान—हल्फी वमय अन्य कागजात इस आशय से गुजारा है कि उसके पुत्र नामक अंकित कुमार शर्मा की जन्म तिथि 13-06-1990 है, जोकि ग्राम पंचायत रूलियानी के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी के पुत्र की जन्म तिथि ग्राम पंचायत रूलियानी के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 21-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

अनिल भारद्वाज,
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज कार्यकारी दण्डाधिकारी डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री दौलत राम पुत्र श्री किरपा राम, निवासी गांव द्रवी, डाकघर डलहौजी कैंट, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसकी पुत्री नामक कनिका शर्मा की जन्म तिथि 03-03-1993 है, जोकि ग्राम पंचायत रूलियानी के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की पुत्री की जन्म तिथि ग्राम पंचायत रूलियानी के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 21-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

अनिल भारद्वाज,
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज सहायक समाहर्ता प्रथम वर्ग डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री सुख राम सुपुत्र श्री खडकू राम, निवासी गांव मनोला, डाकघर गोली, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थना—पत्र बराए नाम दुरुस्ती बारा।

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसका सही नाम सुख राम है, जोकि ग्राम पंचायत मनोला के रिकार्ड में सही दर्ज है। लेकिन राजस्व विभाग के महाल सेर, पटवार वृत्त भटोली में सुन्कू दर्ज है, जोकि गलत दर्ज है, जिसकी दुरुस्ती की जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार राजपत्र हि0 प्र0 सूचित किया जाता है कि प्रार्थी के नाम की दुरुस्ती बारे, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती के आदेश दे दिए जाएंगे।

आज दिनांक 18-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

अनिल भारद्वाज,
सहायक समाहर्ता प्रथम वर्ग,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज, सहायक समाहर्ता प्रथम वर्ग डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री सुख राम सुपुत्र श्री खडकू राम, निवासी गांव मनोला, डाकघर गोली, तहसील डलहौजी जिला चम्बा, हिमाचल प्रदेश प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थना—पत्र बराए नाम दुरुस्ती बारा।

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसका सही नाम सुख राम है, जोकि ग्राम पंचायत मनोला के रिकार्ड में सही दर्ज है। लेकिन राजस्व विभाग के महाल मनोला पटवार वृत्त मनोला में सुन्का दर्ज है, जोकि गलत दर्ज है, जिसकी दुरुस्ती की जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार राजपत्र हि0 प्र0 सूचित किया जाता है कि प्रार्थी के नाम दुरुस्ती बारे, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती के आदेश दे दिए जाएंगे।

आज दिनांक 18-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

अनिल भारद्वाज,
सहायक समाहर्ता प्रथम वर्ग,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज, कार्यकारी दण्डाधिकारी डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री नीरज कुमार पुत्र श्री अमीं चंद, निवासी गांव रूलियानी, डाकघर डलहौजी, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसकी जन्म तिथि 30-11-1988 है, जोकि ग्राम पंचायत रूलियानी के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की जन्म तिथि ग्राम पंचायत रूलियानी के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 20-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित/—
(अनिल भारद्वाज),
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज, सहायक समाहर्ता प्रथम वर्ग डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री सुभाष चंद सपुत्र श्री सन्त राम, निवासी गांव कोटा, डाकघर द्रड्डा, तहसील व जिला चम्बा
हि0 प्र0।

बनाम

प्रार्थी।

प्रार्थना—पत्र बराए नाम दरुस्ती बारा।

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसके पिता का सही नाम सन्त राम है, जोकि राजस्व विभाग के महाल द्रड्डा तहसील व जिला चम्बा के रिकार्ड में सही दर्ज है। लेकिन राजस्व विभाग के महाल धरोटा, पटवार वृत्त रूलियानी में मिनकू दर्ज है, जोकि गलत दर्ज है, जिनकी दरुस्ती की जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार राजपत्र हि0 प्र0 सूचित किया जाता है कि प्रार्थी के पिता के नाम दरुस्ती बारे, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30—12—2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर ना आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम दरुस्ती के आदेश दे दिए जाएंगे।

आज दिनांक 24—11—2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
(अनिल भारद्वाज),
सहायक समाहर्ता प्रथम वर्ग,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज, कार्यकारी दण्डाधिकारी डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री मुनीष कुमार पुत्र श्री हेम राज, निवासी गांव रूलियानी, डाकघर डलहौजी, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.—प्रार्थना पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसकी जन्म तिथि 18—04—1992 है, जोकि ग्राम पंचायत रूलियानी के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की जन्म तिथि ग्राम पंचायत रूलियानी के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30—12—2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 13—11—2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
(अनिल भारद्वाज),
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज, कार्यकारी दण्डाधिकारी डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री विक्रम सिंह पुत्र श्री कर्म चंद, निवासी गांव समलैटा, डाकघर बनीखेत, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसकी जन्म तिथि 20-03-1992 है, जोकि ग्राम पंचायत ढलोग के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की जन्म तिथि ग्राम पंचायत ढलोग के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर/एतराज हो तो वह असागतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 13-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित/—
(अनिल भारद्वाज),
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज, कार्यकारी दण्डाधिकारी डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री मनजीत सिंह पुत्र श्री मदन लाल, निवासी गांव व डाकघर शेरपुर, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र, ब्यान—हल्फी वमय अन्य कागजात इस आशय से गुजारा है कि उसकी जन्म तिथि 07-10-1992 है, जोकि ग्राम पंचायत शेरपुर के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की जन्म तिथि ग्राम पंचायत शेरपुर के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर/एतराज हो तो वह असागतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 13-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित/—
(अनिल भारद्वाज),
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज, कार्यकारी दण्डाधिकारी डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री रणजीत सिंह पुत्र श्री मुख्तयार सिंह, निवासी गांव बासा, डाकघर सुदली, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसके पुत्र दिलदार सिंह की जन्म तिथि 12-06-1993 है, जोकि ग्राम पंचायत सुदली के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी के पुत्र की जन्म तिथि ग्राम पंचायत सुदली के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 12-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
(अनिल भारद्वाज),
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

ब अदालत श्री मोहिन्द्र सिंह राणा, कार्यकारी दण्डाधिकारी डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री चतरो राम पुत्र श्री पंजू राम, निवासी गांव चकरा, डाकघर शेरपुर, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान—हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसके पिता श्री पंजू राम की मृत्यु तिथि 31-08-2014 है, जोकि ग्राम पंचायत टप्पर के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी के पिता की मृत्यु तिथि ग्राम पंचायत टप्पर के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 30-12-2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व मृत्यु तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 23-11-2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
(अनिल भारद्वाज),
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Shri Shyam Giri s/o Shri Paras Nath Giri, r/o Janki Bhawan near Govt. Senior Sec. School Totu, Tehsil & District Shimla, Himachal Pradesh.

Versus

General Public

.. Respondent.

Whereas Shri Shyam Giri s/o Shri Paras Nath Giri, r/o Janki Bhawan near Govt. Senior Sec. School Totu, Tehsil & District Shimla, Himachal Pradesh has filed an application along with affidavit in the court of undersigned under Section 13(3) of the Births & Deaths Registration Act, 1969 to enter the date of birth of his son named Mr. Shashi Kant Giri s/o Shri Shyam Giri s/o Shri Paras Nath Giri, r/o Janki Bhawan near Govt. Senior Sec. School Totu, Tehsil & District Shimla, Himachal Pradesh in the record of Secy., Birth and Death, Municipal Corporation, Shimla.

Sl. No.	Name of the family members	Relation	Date of Birth
1.	Mr. Shashi Kant Giri	Son	25-02-1991

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of the name & date of birth of above named in the record of Municipal Corporation, Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 04-12-2015 under my signature and seal of the court.

Seal.

Sd/-
Sub-Divisional Magistrate,
Shimla (R), District Shimla.

**In the Court of Shri Hemis Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Shri Tuneshwar Uraw s/o Shri Soma, r/o Dhara New Bus Stand, Tuti Kandi, Shimla, Tehsil and District Shimla, H. P. . . Applicant.

Versus

General Public

.. Respondent.

Application under Section 13(3) of Birth and Death Registration Act, 1969.

Whereas Shri Tuneshwar Uraw s/o Shri Soma, r/o Dhara New Bus Stand, Tuti Kandi, Shimla, Tehsil and District Shimla, H. P. has applied for registration the name and date of birth of his son namely Nitesh Kumar (DOB 31-08-2013) and daughter namely Nitu Kumari (DOB 13-12-2010) in the record of Municipal Corporation, Shimla, H.P.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of Birth mentioned above, may submit his objection in writing in

this court on or before 5-1-2016 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 4th day of December, 2015.

Seal.

HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla.

न्यायालय तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, जिला ऊना (हि0 प्र0)

दावा संख्या : Teh. Una/M. Reg./20.....

श्री अजय कुमार सिंह पुत्र श्री नन्द लाल साका, जात तरखान, गांव डंगोली, डा0 डंगोली, तहसील ऊना, जिला ऊना (हि0 प्र0)।

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकदमा उनवान वाला में श्री अजय कुमार सिंह पुत्र श्री नन्द लाल साका, जात तरखान, गांव डंगोली, डा0 डंगोली, तहसील ऊना, जिला ऊना (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 09-02-2011 को श्रीमती रजनी धीमान पुत्री श्री देविन्द्र कुमार, जात लोहार, गांव रैन्सरी, डाकघर रैन्सरी, तहसील ऊना, जिला ऊना (हि0 प्र0) के साथ हुआ है। लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण डंगोली, तहसील ऊना, जिला ऊना (हि0 प्र0) में न करवा सका।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि उपरोक्त वर्णित के विवाह का इन्द्राज रजिस्ट्रार विवाह स्थानीय पंजीकरण डंगोली, तहसील ऊना, जिला ऊना (हि0 प्र0) में दर्ज करवाने बारे किसी को एतराज हो तो वह दिनांक 26-12-2015 को इस न्यायालय में उपस्थित होकर प्रस्तुत कर सकता है, अन्यथा इसके बाद उक्त वर्णित विवाह के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबले समायत न होगा।

आज दिनांक 26-11-2015 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

